

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
EXPEDITED RCRA SETTLEMENT AGREEMENT

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ENVIRONMENTAL PROTECTION
AGENCY - REGION VII
REGIONAL HEARING CLERK

Docket No. RCRA-07-2001-0022

Inspection Date: December 6, 2000

Timber Industries, Inc. (Respondent), violated the standards applicable to wood treatment facilities pursuant to Section 3005 of the Solid Waste Disposal Act, 42 U.S.C. § 6925, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, and Mo. Rev. Stat. § 260.390.1(1)(2000) as noted on the attached FINDINGS AND ALLEGED VIOLATIONS FORM (Form), which is hereby incorporated by reference.

If the Respondent does not sign and return this Expedited Settlement as presented within 30 days of the date of its receipt, the proposed Expedited Settlement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Form.

The parties are authorized to enter into this Expedited Settlement under the authority vested in the Administrator of EPA by Section 3008 of RCRA, 42 U.S.C. § 6928. The parties enter into this Expedited Settlement in order to settle the civil violations described in the Form for a penalty of \$0, based upon Respondent's inability to pay. This settlement is subject to the following terms and conditions:

EPA finds the Respondent's conduct is subject to Section 3005 of RCRA and Mo. Rev. Stat. § 260.390.1(1)(2000). For the purposes of this Agreement, Respondent admits it is subject to the statutes and regulations cited herein and that EPA has jurisdiction over the Respondent and the Respondent's conduct as described in the Form. Respondent neither admits nor denies the

factual allegations contained in this Agreement, and waives any objections it may have to EPA's jurisdiction. Respondent consents to the assessment of the penalty stated above. Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that it is subject to the standards applicable to wood treaters and that the violations are being corrected.

I. Respondent's Actions to Return to Compliance with the Hazardous Waste Regulations

Respondent agrees, as a generator of hazardous waste subject to the requirements of 40 C.F.R. Parts 260-279; Mo. Rev. Stat. §§ 260.350 through 260.434 and 10 CSR 25, to take the following actions within the periods below:

(a) Upon the effective date of this Agreement, Respondent shall immediately cease all releases of the pentachlorophenol wood treatment preservative product and wastes, including but not limited to exhaust and drippage, outside of the retorts in accordance with 10 CSR 25-7.265(1) and 10 CSR 25-7.265(2), referencing 40 C.F.R. § 265.31. Within thirty (30) days of the effective date of this Agreement, Respondent shall submit to EPA a certification and a detailed description of how Respondent has changed its operations and processes to cease all releases of pentachlorophenol wood treatment preservative product and wastes.

(b) Respondent shall immediately cease disposing in the general trash all pentachlorophenol (PCP)-contaminated scrap banding and gloves, pending completion of the hazardous waste determination for these wastes, as required by paragraph (c), below.

(c) Within thirty (30) days of the effective date of this Agreement, Respondent shall make a hazardous waste determination in accordance with 10 CSR 25-5.262, referencing 40 C.F.R. § 262.11, on all solid waste streams generated by Respondent. Solid waste streams

generated at wood treatment facilities include but are not limited to: sludge, waste preservative, wood chips, splinters, sand, sawdust, banding, gloves, personal protective equipment, storm water, waste water, etc. Respondent shall also conduct a hazardous waste determination on any wastes that remain in the old treatment cylinder, treatment cylinder 3, the working tank for treatment cylinder 3 (T3 working tank), and the liquid in the containment structure for the T3 working tank. Within seven (7) days of making such a determination, Respondent shall submit to EPA documentation demonstrating that the determination has been performed. Each determination shall include documentation of the following:

1. A description of the process that generated the waste;
2. A determination of whether or not the waste has been excluded from regulation under 40 C.F.R. Part 261;
3. A determination of whether or not the waste has been listed in Subpart D of 40 C.F.R. Part 261; and
4. A determination of whether or not the waste is identified in 40 C.F.R. Part 261, Subpart C. To determine whether the waste fails any of the characteristics in Subpart C, the waste may need to be analyzed using the procedure set forth in Subpart C of 40 C.F.R. Part 261, or by applying knowledge of the waste characteristics based upon the material or processes used. If knowledge of the process is used, please provide a detailed explanation regarding the basis for this knowledge and your reasoning.

(d) Within sixty (60) days of the effective date of this Agreement, Respondent shall determine the facility's generator status based on the amount of hazardous waste generated in a

calendar month or accumulated on-site at any one time. Respondent shall immediately manage all hazardous wastes in accordance with 10 CSR 25, based on the facility's generator status.

Within seven (7) days of ascertaining the facility's generator status, Respondent shall submit to EPA such documentation showing the determination has been performed.

(e) Within sixty (60) days of the effective date of this Agreement, Respondent shall submit to EPA documentation showing that the facility has registered with the Missouri Department of Natural Resources as a generator of hazardous waste in accordance with 10 CSR 25-5.262(2)(A)1.A.

(f) Within sixty (60) days of the effective date of this Agreement, Respondent shall ship off-site all hazardous wastes that have been stored at the facility in excess of the time allowed based on Respondent's generator status. All hazardous wastes shall be shipped to a permitted hazardous waste treatment, storage and/or disposal facility. Respondent shall submit to EPA a copy of the manifest and Land Disposal Restriction notice forms within thirty (30) days of off-site shipment.

(g) For a period of one (1) year following the effective date of this Agreement, Respondent shall submit to EPA copies of all manifests and all Land Disposal Restriction notice forms within thirty (30) days of each shipment of hazardous waste from the facility

(h) Within ninety (90) days of the effective date of this Agreement, Respondent shall submit to EPA a certification and a detailed description of how Respondent is conducting all wood treatment operations at the facility in compliance with the hazardous waste regulations found at 10 CSR 25, 40 C.F.R. § 262.34 and 40 C.F.R. Part 265 Subpart W, based on

Respondent's generator status. (An explanation of these regulations can be found in the enclosed guidance document, "Wood Preserving Resource Conservation and Recovery Act Compliance Guide", June 1996.)

II. Site Characterization and Clean-up

(a) *Site Characterization Work Plan and Report.* Respondent shall submit a Site Characterization Work Plan to EPA for review and approval, in accordance with the schedule in Appendix I. The Site Characterization Work Plan, as more fully described in Appendix II, shall include provisions for systematically sampling the entire Site, with specific attention to those areas where pentachlorophenol contamination is likely to be found based on past practices at the facility. Upon EPA approval of this Work Plan, Respondent shall implement the Work Plan in accordance with the schedule contained therein. The results of this work shall be submitted for EPA review and approval in a Site Characterization Report, in accordance with the schedule in Appendix I.

Based upon the information provided in the Site Characterization Report, and other information available to EPA, EPA will select a clean-up action or actions for the facility. EPA will provide written notice to Respondent of the clean-up actions and any performance standards and clean-up levels that are selected by EPA.

(b) *Clean-up Action Work Plan and Report.* Respondent shall submit a Clean-up Action Work Plan for EPA review and approval, in accordance with the schedule in Appendix I. The Clean-up Action Work Plan, as more fully described in Appendix II, shall describe the procedures for conducting the clean-up actions as selected by EPA. Upon EPA approval of this Work Plan, Respondent shall implement the Work Plan in accordance with the schedule

contained therein. The results of this work shall be submitted for EPA review and approval in a Clean-up Action Report, in accordance with the schedule in Appendix I.

Respondent shall submit all documents required to be submitted pursuant to this Agreement, unless otherwise specified herein, to: Elizabeth Koesterer, Environmental Engineer, ARTD/RESP, U.S. EPA Region VII, 901 North 5th Street, Kansas City, KS 66101.

After all compliance and clean up activities have been completed to EPA's satisfaction, EPA will take no further civil action against the Respondent for the specific violations of Section 3005 of RCRA and Mo. Rev. Stat. § 260.390.1(1)(2000) described in the Form. However, EPA does not waive any rights to take any enforcement action for any other past, present or future violations by the Respondent of Section 3005 of RCRA or of any other federal statute or regulation. By its first signature, EPA ratifies the Findings and Alleged Violations set forth in the Form.

Upon signing and returning this Expedited Settlement to EPA, Respondent waives its right to contest the allegations in this Agreement and the opportunity for a hearing or appeal pursuant to Section 3008 of RCRA, and consents to EPA's approval of the Expedited Settlement without further notice.

Timber Industries, Inc.
Docket No. RCRA-07-2001-0022

This Expedited Settlement is binding on the parties signing below, and effective upon the
Regional Judicial Officer's signature.

APPROVED BY EPA:

William A. Spratlin
William A. Spratlin
Director
Air, RCRA and Toxics Division

Date: 10/29/02

APPROVED BY RESPONDENT:

Name (print): TIMBER INDUSTRIES, INC
by Leslie A. Curley
Title (print): President
Signature: Leslie A. Curley

IT IS SO ORDERED:

Robert Patrick
Robert Patrick
Regional Judicial Officer

Date: November 14, 2002

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
FINDINGS AND ALLEGED VIOLATIONS FORM**

Docket No. RCRA-07-2001-0022

Inspection Date: December 6, 2000

Timber Industries, Inc., Salem, Missouri, was subject to the requirements and found to be in violation of Section 3005 of the Solid Waste Disposal Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. § 6925, and Mo. Rev. Stat. § 260.390.1(1)(2000).

APPENDIX I
SCHEDULE OF DOCUMENT SUBMITTAL

EVENT	DUE DATE
Submit Site Characterization Work Plan with QAPP and HASP to EPA	Within ninety (90) calendar days from the effective date of the Expedited Settlement.
Submit Site Characterization Report to EPA	Within 120 calendar days of EPA approval of the Site Characterization Work Plan and QAPP.
Submit Clean-up Action Work Plan with QAPP and HASP to EPA	Within forty-five (45) calendar days of receipt of a notice that EPA has selected a clean-up action or actions for the Site.
Submit Clean-up Action Report to EPA	Within sixty (60) days of completion of the clean-up activities at the site.

APPENDIX II

STATEMENT OF WORK FOR SITE CHARACTERIZATION and CLEAN-UP ACTIONS AT TIMBER INDUSTRIES, INC. SALEM, MISSOURI

Site Characterization Work Plan and Report

Respondent shall submit a Site Characterization Work Plan for EPA review and approval, in accordance with the schedule in Appendix I. The purpose of the Site Characterization Work Plan is to define the extent of contamination of soil, groundwater and surface water by the wood treating operations at the Site. The Site Characterization Work Plan shall include provisions for systematically sampling the entire Site, with specific attention to those areas where surface and subsurface (e.g. soil, surface water and groundwater) contamination are likely to be found based on past practices at the facility. The Site Characterization Work Plan must address, but not be limited to, contamination or potential contamination in or on: the floor of the treatment building (soil and concrete around the retorts and tracks, staging areas between retorts, T3 working tank containment sump, treated wood storage areas, releases from the vacuum pumps for all three retorts), soils outside of the building that have been contaminated with PCP due to the release of exhaust from the retorts, soils under the T3 working-tank rinsate pipe on the south side of the treatment building, soils beneath the two outlet pipes from the T3 working tank on the north side of the containment sump, treated wood storage yards, and the water and soils in the portion of the facility where the surface water runoff drainage may have carried PCP contamination off-site to the ditch west of the facility (Figure 1). This Work Plan shall also detail Respondent's schedule for implementation. Upon approval by EPA, Respondent shall implement the approved Work Plan, in accordance with the schedule contained therein. The results of this work shall be submitted for EPA review and approval in a Site Characterization Report, in accordance with the schedule in Appendix I. The Site Characterization Report shall also include proposed clean-up options (actions), performance standards and clean-up levels for the Site.

Clean-up Action Work Plan and Report

Following review and approval of the Site Characterization Report, EPA will evaluate and select an appropriate cleanup action or actions for this Site, and notify Respondent thereof. In accordance with the schedule found in Appendix I, Respondent shall submit a Clean-up Action Work Plan for EPA review and approval. The purpose of the Clean-up Action Work Plan is to establish the goals and methodology for clean-up of the contamination present at the Site. The Clean-up Action Work Plan shall describe procedures for conducting the clean-up action(s) selected by EPA. This plan shall include any performance standards and cleanup levels as specified by EPA in its notification to Respondent and shall detail Respondent's schedule for implementation. Upon approval by EPA, Respondent shall implement the approved Work Plan

in accordance with the schedule contained therein. The results of this work shall be submitted for EPA review and approval in a Clean-up Action Final Report, in accordance with the schedule in Appendix I.

Compliance with Quality Assurance Requirements

Each Work Plan (described above) shall include a Quality Assurance Project Plan ("QAPP"), for EPA review and approval, addressing quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations" (EPA QA/R-5 (March 2001)), as well as other such applicable guidance identified by EPA. Each QAPP shall describe the sampling procedures that will be used, shall describe the proposed sample locations, and shall ensure that samples are collected and analyzed using EPA-approved protocols. In addition, each QAPP shall describe the number and type of samples to be collected, the method(s) of collection and analysis, and criteria for determining sampling locations.

Compliance with OSHA Requirements

Each Work Plan (described above) shall be accompanied by a Health and Safety Plan ("HASP") to be implemented during field activities at the Site. The HASP shall be consistent with applicable Occupational Safety and Health Administration (OSHA) regulations.

Implementation

Following EPA approval of each Work Plan (described above), Respondent shall implement the Work Plan in accordance with the schedules contained therein.

Enforceability

Each EPA-approved Work Plan and submittal shall become an enforceable part of this Expedited Settlement Agreement.

Laboratory Practices

Samples analyzed pursuant to this Expedited Settlement shall be analyzed by a laboratory which participates in a quality assurance/quality control program equivalent to that specified in the most recent versions of the documents entitled "USEPA Contract Laboratory Program Statement of Work for Organic Analysis" and "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis" (hereinafter "Contract Lab Statements of Work").

Sample collection and analysis shall be performed in compliance with EPA-approved methods, including timing of analysis (holding times), documentation of sample collection, handling and analysis, as described in the Contract Lab Statements of Work.

Laboratory deliverables for all analytical work performed pursuant to this Expedited Settlement, as specified in the Contract Lab Statements of Work, shall be submitted to EPA in accordance with the Work Plans approved herein. Any deviations from the procedures and methods set forth in these documents must be approved in writing by EPA prior to use.

Respondent shall use the quality assurance, quality control, and chain of custody procedures specified in the Quality Assurance Project Plan(s) as approved by EPA for all sample collection and analysis performed pursuant to this Expedited Settlement.

If required by EPA, laboratories analyzing samples pursuant to this Expedited Settlement shall perform, at Respondent's expense, analyses of performance evaluation samples provided by EPA to test the quality of each such laboratory's analytical capabilities.

Respondent shall ensure that EPA representatives are allowed access, for auditing purposes, to all laboratories and laboratory personnel utilized by Respondent for sample collection and analysis and other field work.

Submittals

Respondent shall submit documents (i.e., work plans, QAPPs, HASPs, and reports) to EPA for review and approval in accordance with the schedule in Appendix I. EPA will review such documents and will notify Respondent, in writing, as to its approval or disapproval thereof. Within thirty (30) days of receipt of EPA's disapproval of a document, Respondent shall amend the document in accordance with EPA's comments and shall submit the amended document to EPA. Upon receipt of the amended document, EPA may: (1) accept and approve the document, or (2) disapprove Respondent's amendment and modify the document itself. Once the document has been accepted or modified by EPA, it becomes incorporated herein and is enforceable under this Agreement.

Additional Work

During the course of the work performed pursuant to this Expedited Settlement, EPA may determine that sampling, analysis, reporting or other tasks, in addition to those specifically set forth herein, are necessary to satisfy the purposes of this Expedited Settlement. If EPA so determines, it will advise Respondent in writing of the nature of the additional tasks and the basis for EPA's determination. Respondent shall undertake, perform and complete all such additional tasks and provide such documents and reports required by EPA in addition to those provided for herein. The additional work shall be completed in accordance with standards, specifications, and schedules determined or approved by EPA.

Project Managers

EPA and Respondent will each designate a Project Manager for the work to be conducted under this Expedited Settlement. Unless otherwise specified elsewhere, to the maximum extent

possible, all notices, reports and other documentary submissions to be exchanged by the parties shall be directed through the parties' respective Project Managers. EPA's Project Manager is:

Elizabeth A. Koesterer
Environmental Engineer
U.S. Environmental Protection Agency
901 North Fifth Street
Kansas City, Kansas 66101
Phone: (913) 551-7673
Fax: (913) 551-7947

Respondent's Project Manager is:

[insert Respondent's Project Manager]

Respondent's Project Manager, or any successor, shall be reasonably qualified to conduct the required work, and shall not be Respondent's attorney. Notice by EPA to Respondent's Project Manager shall constitute notice to the Respondent. Either party may change its Project Manager by providing written notification of the change to the other party five days in advance.

Confidential Business Information

Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R. § 2.203(b) covering all or part of any information submitted to EPA. In accordance with 40 C.F.R. § 2.204(e)(4), any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made. Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and manner permitted by 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to the Respondent. Respondent agrees not to assert any confidentiality claim with respect to any physical, sampling, monitoring, or analytical data.

Advance Notice of Respondent's Field Activities

Respondent shall notify EPA at least 30 days in advance of the date of any field sampling and/or field boring activities so that EPA may make arrangements to be present.

EPA and State Access to the Site

EPA and the Missouri Department of Natural Resources ("MDNR") and their authorized representatives shall have authority to enter and freely move about the Site at all times for the purposes of, *inter alia*: inspecting records; reviewing the progress of the Respondent in carrying out the provisions of this Expedited Settlement; conducting such tests and taking such samples as EPA deems necessary; using a camera, video camera, sound recording, or other documentary

EPA, and shall become effective on the date on which a fully executed copy thereof is filed with the Regional Hearing Clerk, EPA Region VII.

Termination and Satisfaction

The requirements of this Expedited Settlement shall be deemed satisfied upon written notice from EPA to Respondent stating that Respondent has demonstrated, to the satisfaction of EPA, that all of the terms of this Expedited Settlement have been completed. The record preservation requirements of this Expedited Settlement shall survive the termination of this Expedited Settlement.

Extensions

Extensions of time may be granted in writing by EPA's Project Manager.

IN THE MATTER OF Timber Industries, Inc., Respondent
Docket No. RCRA-07-2001-0022

CERTIFICATE OF SERVICE

I certify that the foregoing Expedited RCRA Settlement Agreement was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Leslie Humphrey
Associate Regional Counsel
Office of Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Sue Chrisman
William H. McDonald & Associates
300 South Jefferson, Suite 600
P.O. Box 1245
Springfield, Missouri 65801-1245

Dated: 11/15/02



Kathy Robinson
Regional Hearing Clerk